1	IRELL & MANELLA LLP				
2	David C. McPhie (#231520) dmcphie@irell.com				
3	Kamran Vakili (#284441)				
4	kvakili@irell.com 840 Newport Center Drive, Suite 400				
5	Newport Beach, CA 92660				
6	Telephone: (949) 760-0991 Facsimile: (949) 760-5200				
7	1 aesimile. (949) 700-3200				
8	Attorneys for Plaintiff Audatex North				
9	America, Inc.				
10					
11	UNITED STATES DISTRICT COURT				
12	SOUTHERN DISTRICT OF CALIFORNIA				
13	AUDATEX NORTH AMERICA, INC.,	Case No. 13cv1523-BEN (BLM)			
14	Plaintiff,) AUDATEX'S RESPONSE TO			
15		OCOURT'S OCTOBER 10, 2017 ORDER TO SHOW CAUSE WHY			
16	V.	THIS CASE SHOULD NOT BE			
17		DISMISSED			
18	MITCHELL INTERNATIONAL, INC.,))			
19	Defendant.				
20))			
21))			
22					
23					
24					
25					
26					
27					
28					

Plaintiff Audatex hereby responds to the Court's order to show cause of October 10, 2017 (Dkt. No. 218).

Audatex respectfully submits that this case should not be dismissed. The Covered Business Method ("CBM") review for the patents asserted in this case is not yet final, as Audatex has petitioned the Supreme Court for certiorari in connection with those proceedings. Ex. A (Petition). Notably, the question of the constitutionality of certain Patent Office's adversarial proceedings on patent validity is already currently before the Supreme Court in *Oil States Energy Services LLC v. Greene's Energy Group*, LLC, 137 S. Ct. 1139 (2017). Audatex's petition presents essentially the same question as *Oil States*, namely whether the extra-judicial administrative CBM proceeding that purportedly invalidated Audatex's patents, outside of an Article III forum and without a jury, is unconstitutional. Given that certiorari has already been granted in *Oil States*, Audatex has asked the Supreme Court to hold its petition in abeyance until the ruling in *Oil States*. If the Supreme Court rules in *Oil States* that these Patent Office administrative proceedings are unconstitutional, then the CBM decision on the patentability of Audatex's claims will be void.

Thus, Audatex respectfully submits that there is no good cause to dismiss this case at this time. Given that Audatex's petition and appeal are still pending before the Supreme Court, it would be a waste of judicial resources to dismiss this case now, only to have it reinstated later should the Supreme Court issue a favorable ruling in *Oil States* and on Audetex's petition for certiorari.

Accordingly, this court should continue to maintain the status quo pending the Supreme Court's resolution of *Oil States* and Audatex's petition for certiorari. This case should continue to be stayed, and not dismissed, until all open appellate issues have been resolved in connection with the CBM proceedings involving the patents-in-suit.

- 1 -

1	1	
2	2 Dated: October 23, 2017	Respectfully submitted,
3	3	IRELL & MANELLA LLP
4	4 By: _	/s/ Kamran Vakili
5	5	D :1 G M DI: (#221520)
6	6	David C. McPhie (#231520) dmcphie@irell.com
7	7	Kamran Vakili (#284441)
8	8	kvakili@irell.com 840 Newport Center Drive, Suite 400
9	9	Newport Beach, CA 92660
10	0	Telephone: (949) 760-0991 Facsimile: (949) 760-5200
11	1	
12	2	Attorneys for Plaintiff Audatex North America, Inc.
13	3	Timerved, Tre.
14	4	
15	5	
16	6	
17	7	
18	8	
19	9	
20	0	
21	1	
22	2	
23	3	
24	4	
25	5	
26	6	
27	7	
28	8	

1	PROOF OF SERVICE			
2	I am employed in the County of Orange, State of California. I am over the age			
3	of 18 and not a party to the within action. My business address is 840 Newport Center Drive, Suite 400, Newport Beach, California 92660-6324.			
4	On October 23, 2017, I served the foregoing document described as			
5 6	AUDATEX'S RESPONSE TO COURT'S OCTOBER 10, 2017 ORDER TO SHOW CAUSE WHY THIS CASE SHOULD NOT BE DISMISSED on each			
7	interested party, as follows:			
8	(BY E-FILE): I caused such documents to be transmitted by e-file			
9	with the Clerk of the Court by using the CM/ECF system, which wi send a notice of electronic filing to the following:			
10				
11	PAUL, PLEVIN, SULLIVAN & CONNAUGHTON LLP Fred M. Plevin			
12	fplevin@paulplevin.com			
13	101 West Broadway, Ninth Floor San Diego, CA 92101			
14	Tel: (619) 744-3650			
15	MORGAN, LEWIS & BOCKIUS LLP			
16	Jason C. White		Lorraine Casto	
17	jwhite@morganlewis.c Scott Shutte		lcasto@morganlewis.com One Market, Spear Street Tower	
18	sshutte@morganlewis.	com	San Francisco, CA 94105	
19	twarden@morganiewis.com			
20				
21	Chicago, IL 60601 Tel: (312) 324-1000			
22	101. (312) 324-1000			
23	Attorneys for Defendant Mitchell International, Inc.			
24	Executed on October 23, 2017, at Newport Beach, California.			
25	I declare under penalty of perjury under the laws of the United States of			
26	America that the foregoing is true and correct.			
27	Lois Stev		/s/ Lois Stevens	
28	(Type or prin	t name)	(Signature)	